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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
ANTHONY SCOTT LEVANDOWSKI,

Debtor.

ANTHONY SCOTT LEVANDOWSKI,

Plaintiff,
UBER TECHNOLOGIES, INC.,

Defendant.

Bankruptcy Case No. 20-30242 (HLB)
Chapter 11
Hon. Hannah L. Blumenstiel

Adv. Proceeding No. 20-03050

**DECLARATION OF JEFF NARDINELLI
IN SUPPORT OF ANTHONY
LEVANDOWSKI’S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL [Dkt. No.
410]**

1 I, Jeffrey W. Nardinelli, hereby declare:

2 1. I am an attorney at the law firm of Quinn, Emanuel, Urquhart & Sullivan, LLP and
3 counsel of record for non-party Waymo LLC (“Waymo”) in the above-captioned matter. I am a
4 member of the bar of the State of California. I have personal knowledge of the facts set forth in
5 this declaration, and, if called as a witness, I could and would testify competently to the matters
6 set forth herein.

7 2. Pursuant to Civil Local Rule 79-5(f)(3), applicable to this proceeding under B.L.R.
8 1001-2, I submit this declaration in support of Plaintiff Anthony Levandowski’s Administrative
9 Motion to File Under Seal (Dkt. No. 410¹) portions of Plaintiff’s Motion *in Limine* to Exclude
10 Evidence and Argument in Support of Uber’s Equitable Indemnity Counterclaims (the “Motion”)
11 and exhibits thereto.²

12 3. Under section 107(a) of the Bankruptcy Code, papers filed in bankruptcy court are
13 “public records” except as provided by section 107(b). 11 U.S.C. § 107(a). Under section 107(b),
14 “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own
15 motion, the bankruptcy court may— (1) protect an entity with respect to a trade secret or
16 confidential research, development, or commercial information.” 11 U.S.C. § 107(b). Courts
17 must consider sealing requests “even more carefully when the person objecting to the disclosure
18 was not a party to the proceeding.” *In re Roman Cath. Archbishop of Portland in Oregon*, 661
19 F.3d 417, 433 (9th Cir. 2011). Although protection of confidential information “is required,” a
20 court “has discretion when deciding how to protect commercial information.” *In re Borders Grp.*,
21 Inc., 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011). For example, where only part of a document
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25 ¹ Mr. Levandowski styled his sealing motion as an Administrative Motion to File Under
26 Seal. Civil Local Rule 79-5(f) requires that when moving to seal a document designated
27 confidential by another party or non-party, the filing party must file an Administrative Motion to
28 Consider Whether Another Party’s Material Should Be Sealed. Waymo treats Mr. Levandowski’s
sealing motion as an Administrative Motion to Consider Whether Another Party’s Material Should
Be Sealed, and files this Declaration pursuant to Civil Local Rule 79-5(f)(3) and 79-5(c)(1).

² The exhibits were filed as exhibits to the Declaration of Brett M. Schuman (Dkt. No. 413-1).

1 qualifies for protection, the court may order the document redacted, rather than sealed in its
2 entirety. *Id.*

3 4. Waymo requests that the following documents be sealed and/or redacted:

Document	Portion to be Sealed
Motion	Page 1, lines 7-8 (portions disclosing consideration)
	Page 4, line 20 (same)
	Page 5, lines 4 and 10 (same)
Schuman Ex. B	Entire document
Schuman Ex. C	Page 4, lines 4-14 (disclosing terms of Settlement Agreement)
Schuman Ex. H	Same redactions as Dkt. No. 369

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12 5. With respect to the Motion: At pages 1, 4, and 5, Waymo proposes to redact
13 confidential consideration terms from the February 2018 Settlement Agreement from the federal
14 trade secret lawsuit, *Waymo LLC v. Uber Techs., Inc.*, Case No. 3:17-cv-00939-WHA (N.D. Cal.)
15 (the “Settlement Agreement”). The Court previously ordered that the Settlement Agreement and
16 references to its terms be sealed. *See* Dkt. No. 245 (granting Uber’s motion to seal a copy of the
17 Settlement Agreement); *see also* Dkt. No. 28 (granting motion to redact settlement related
18 information in Uber’s opposition to Google’s motion to intervene); Dkt. No. 32 (same, in Google
19 LLC’s reply in support of its motion to intervene); Dkt. No. 44 (same, in Uber’s amended answer);
20 Dkt. No. 156 (ordering references to and descriptions and quotations of Settlement Agreement to
21 be filed under seal); Dkt. No. 186 (ordering references to the terms of the Settlement Agreement
22 redacted); Dkt. No. 276 (ordering the Settlement Agreement be filed under seal as well as exhibits
23 that discuss, refer to, or quote the Settlement Agreement). The Settlement Agreement is
24 confidential by its own terms, and was and is treated as confidential by the parties. Its terms are
25 confidential and sensitive for business reasons.

26 6. **Exhibit B** to the Schuman Declaration is the Settlement Agreement. Waymo
27 requests that the Settlement Agreement remain entirely under seal, consistent with this Court’s
28

1 prior rulings. *See, e.g.*, Dkt. No. 276 (“The court will adhere to its prior orders, and therefore
2 agrees that ... copies of the Waymo Settlement Agreement itself, should be filed under seal.”).

3 7. ***Exhibit C*** to the Schuman Declaration is an interrogatory response from Uber that
4 describes and quotes from the Settlement Agreement. Waymo requests that the portions of
5 Exhibit C that describe and quote the terms of the Settlement Agreement remain sealed, consistent
6 with this Court’s prior rulings. *See, e.g.*, Dkt. No. 276 (“The court will permit the Proposed
7 Redactions ... as they pertain to discussions of, references to, or direct quotes from the Waymo
8 Settlement Agreement or its terms.”).

9 8. ***Exhibit H*** to the Schuman Declaration is a document entitled “Expert Disclosure of
10 J. Christian Gerdes,” dated February 22, 2021. This Court has previously received extensive
11 briefing on the sealing of this exact document, and has issued an order permitting portions of the
12 document to be filed under seal. Dkt. Nos. 360-364 (briefing and proposed redactions), 367 (order
13 permitting certain portions of the Gerdes documents to remain under seal). The public redacted
14 version of this document is filed at Dkt. No. 369. Waymo requests that Exhibit H to the Schuman
15 Declaration be redacted in the same way as previously ordered.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed on this 7th day of February, 2022, at San Francisco, California.

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20 /s/ Jeff Nardinelli
21 Jeff Nardinelli
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